IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 367 OF 2000

Central Bureau of Investigation
Anti Corruption Branch, Mumbai ..Applicant

versus

1. K. Harwinder Bawa
2. State of Maharashtra ..Respondents

AND

CRIMINAL REVISION APPLICATION NO. 368 OF 2000

Central Bureau of Investigation
Anti Corruption Branch, Mumbai ..Applicant

versus

1. K. Bandopadhyay
2. State of Maharashtra ..Respondents

Mr. J. C. Satpute for the Applicants.
Mr. Ramrao Adik (Senior Counsel) with Mr. Sachin Kadam for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 6TH MAY,2005

ORAL ORDER :

1. Both these Revisions have been filed by the CBI challenging the order of discharge of the respondents passed by Special Judge Bombay dated 26.4.2000.

2. I had heard these Revisions earlier and they were decided by me on 29.1.2002 and the matter was referred by me before Larger Bench for considering the following angles:

> (1) Whether the issuance of Public Notice dated 20.6.1995 about standing order dated 20.6.1995 would constitute notice to the respondents?
>
> (2) Whether non-accompanying of packing list with the baggage requires the officer to carry out 100% verification and whether discrepancy in the description describing the quantity of goods given in declaration and description in valuation as is found in the subsequent verification done by the CBI are sufficient to proceed further with the accused by setting aside the impunged order?

The Division Bench by its oral order dated 13th / 17th March 2003 answered the first question in the negative and held that the respondents cannot be

said to have constructive notice of the standing order dated 20.6.1995 by virtue of public notice issued on 20.6.1995.

3. Regarding second question, the Division Bench held that it is implicit in the circular dated 8.4.1993 that in absence of packing list accompanying the baggages, the officers were required to carry out 100% verification of the package. Division Bench thereafter referred the matter for decision on merits, according to law.

4. I asked both the Advocates for the applicants and respondents to give their written notes of arguments and accordingly both of them had given their respective notes of arguments. So far as applicants are concerned, their main case is about the knowledge of the customs officers i.e. respondents about notification dated 20.6.1995. Alternatively, it is contended that if in case of any unaccompanied baggage in packing list, 100% check was necessary and since 100% check was not done, this was sufficient to prosecute the respondents. This main contention is raised by the applicants in paragraph 3 of the written submissions. As against this, Mr. Adik repeatedly and strenuously urged that the applicants have levelled charges under Section 120B read with 420 of

IPC and Sectilon 13(2) read with 13(1)(B) of Prevention of Corruption Act, but there was absolutely no iota of evidence in respect of any of these charges.

. **Charge of Conspiracy u/s. 120B I.P.C.**

From the entire evidence and substance of charge it is nowhere revealed and or shown that the Respondents - Custom Preventive Officers had any nexus or prior contact or meeting with any of the accused in fact there is no evidence whatsoever to show any nexus at all. The Respondents were never ever aware as to which passengers baggage would be assigned to them.

. **Charge of cheating u/s. 420 of I.P.C.**

From the entire evidence and substance of charge, it is nowhere revealed and/or shown that the Custom Preventive Officer had made any false representation to any person and/or had induced any person to part with any property in fact the evidence is otherwise. In the entire charge sheet not even a single ingredient of cheating as defined under Section 415 of IPC is disclosed against the respondents.

Charge of Corruption u/s. 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988

From the entire evidence and substance of charge, it is not at all revealed anywhere and/or for a matter of fact even prima facie shown that the respondents had by indulging in corrupt or illegal means obtained for himself or for any other person any valuable thing or pecuniary advantage nor has it been even prima facie revealed and/or shown from the entire charge sheet that Respondents abused his position as a public servant to obtain for himself or for any other person any valuable thing or pecuniary advantage neither has it been even prima facie revealed that while holding office as public servant, he obtained for any person any valuable thing or pecuniary advantage without any public interest.

5. Mr. Adik contended therefore in the aforesaid background if there is no material to proceed against the respondents against any of the charges and if the trial court has come to the said conclusion after scrutiny of the entire evidence and material, then no interference in that order was

required.

6. When questioned, as to how Prevention of Corruption Act can be made applicable, Mr. Satpute relied upon Section 13(1)(d) of the Prevention of Corruption Act, 1988, which is as under:

> **(d) if he,-**
> **(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or**
> **(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or**
> **(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;**

Mr. Satpute, led emphasis on the words *"Obtains for himself or for any other person any valuable thing or pecuniary advantage"* and contended that by allowing the said passenger to bring those goods, the respondents had obtained for themselves or for the said passenger any valuable thing or pecuniary advantage.

7. This submission of Mr. Satpute is required to be rejected because there is nothing on record to show that the respondents obtained anything for themselves. Further, Mr. Satpute lost sight of the opening words of Sub Section (d) (i) of Section 13 i.e. "**by corrupt or illegal means".** then (d) (ii) i.e. **"by abusing his position as a public servant",** and (d) (iii) "**while holding office as a public servant".**

8. These opening words and the whole object of Section 13 to punish a public servant was that they do not indulge in corruption or corrupt practices. There is absolutely no iota of evidence in any form whatsoever that the respondents indulged into corruption or abused their public service. The question of fixing criminal liability on the respondents under different serious sections of the penal laws and therefore as rightly held by the trial court in the impugned order the case does not come under any of the aforesaid provisions. There are no reasons, therefore to interfere with this order. Consequently both the Criminal Revisions Applications are dismissed.

6.05.2005 (D.G. DESHPANDE, J.)